

2008 WL 5082762 (Ariz.Super.) (Jury Instruction)
Superior Court of Arizona.
Maricopa County

In the matter of the Estate of Noyes HANSCOME,
v.
EVERGREEN AT FOOTHILLS. LLC.

No. CV2006-005515.
October 30, 2008.

Final Jury Instructions

DUTY OF JURORS

LADIES AND GENTLEMEN:

IT IS YOUR DUTY TO DECIDE THE FACTS. YOU MUST DECIDE THE FACTS ONLY FROM THE EVIDENCE PRESENTED IN COURT. YOU MUST NOT SPECULATE OR GUESS ABOUT ANY FACT. YOU MUST NOT BE INFLUENCED BY SYMPATHY OR PREJUDICE.

YOU HAVE HEARD THE EVIDENCE. YOU WILL DECIDE THE FACTS, AND THEN APPLY THE LAW I WILL GIVE YOU TO THOSE FACTS. THAT IS HOW YOU WILL REACH YOUR VERDICT(S). IN DOING SO YOU MUST FOLLOW THAT LAW WHETHER YOU AGREE WITH IT OR NOT.

YOU MUST NOT TAKE ANYTHING I MAY HAVE SAID OR DONE DURING THE TRIAL AS INDICATING ANY OPINION I HAVE ABOUT THE FACTS. YOU AND YOU ALONE ARE THE JUDGES OF THE FACTS.

EVIDENCE

YOU WILL DECIDE WHAT THE FACTS ARE FROM THE EVIDENCE PRESENTED HERE IN COURT. THAT EVIDENCE CONSISTED OF TESTIMONY OF WITNESSES, DOCUMENTS AND OTHER THINGS RECEIVED IN EVIDENCE AS EXHIBITS, AND ANY FACTS STIPULATED, OR AGREED TO, BY THE PARTIES OR WHICH YOU ARE INSTRUCTED TO ACCEPT.

YOU WILL DECIDE THE CREDIBILITY AND WEIGHT TO BE GIVEN TO ANY EVIDENCE PRESENTED IN THE CASE, WHETHER IT BE DIRECT EVIDENCE OR CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS A PHYSICAL EXHIBIT OR THE TESTIMONY OF A WITNESS WHO SAW, HEARD, TOUCHED, SMELLED OR OTHERWISE ACTUALLY PERCEIVED AN EVENT. CIRCUMSTANTIAL EVIDENCE IS THE PROOF OF A FACT FROM WHICH THE EXISTENCE OF ANOTHER FACT MAY BE INFERRED. YOU MUST DETERMINE THE WEIGHT TO BE GIVEN TO ALL THE EVIDENCE WITHOUT REGARD TO WHETHER IT IS DIRECT OR CIRCUMSTANTIAL.

DEPOSITION TESTIMONY

CERTAIN TESTIMONY HAS BEEN PLACED INTO EVIDENCE FROM DEPOSITIONS. A DEPOSITION IS TESTIMONY TAKEN UNDER OATH BEFORE THE TRIAL AND PRESERVED IN WRITING. YOU ARE TO CONSIDER THAT TESTIMONY AS IF IT HAD BEEN GIVEN IN COURT.

RULINGS OF THE COURT

ADMISSION OF EVIDENCE IN COURT IS GOVERNED BY RULES OF LAW. I HAVE APPLIED THOSE RULES AND RESOLVED ISSUES THAT AROSE DURING THE TRIAL CONCERNING THE ADMISSION OF EVIDENCE. IF AN OBJECTION TO A QUESTION WAS SUSTAINED, YOU MUST DISREGARD THE QUESTION AND YOU MUST NOT GUESS WHAT THE ANSWER TO THE QUESTIONS MIGHT HAVE BEEN. IF AN EXHIBIT WAS OFFERED IN EVIDENCE AND AN OBJECTION TO IT WAS SUSTAINED, YOU MUST NOT CONSIDER THAT EXHIBIT AS EVIDENCE. IF TESTIMONY WAS ORDERED STRICKEN FROM THE RECORD, YOU MUST NOT CONSIDER THAT TESTIMONY FOR ANY PURPOSE.

DO NOT CONCERN YOURSELVES WITH THE REASONS FOR MY RULINGS ON THE ADMISSION OF EVIDENCE. DO NOT REGARD THOSE RULINGS AS ANY INDICATION FROM ME OF THE CREDIBILITY OR WEIGHT YOU SHOULD GIVE TO ANY EVIDENCE THAT HAS BEEN ADMITTED.

ARGUMENTS OF COUNSEL

IN OPENING STATEMENTS AND CLOSING ARGUMENTS THE LAWYERS HAVE TALKED TO YOU AND WILL TALK TO YOU ABOUT THE LAW AND EVIDENCE. WHAT THE LAWYERS SAID AND WILL SAY IS NOT EVIDENCE, BUT IT MAY HELP YOU UNDERSTAND THE LAW AND EVIDENCE.

STIPULATIONS

THE PARTIES ARE PERMITTED TO STIPULATE OR AGREE THAT CERTAIN FACTS EXIST. YOU MUST REGARD ANY STIPULATED OR AGREED UPON FACT AS HAVING BEEN PROVED.

CREDIBILITY OF WITNESSES

IN DECIDING THE FACTS OF THIS CASE, YOU SHOULD CONSIDER WHAT TESTIMONY TO ACCEPT, AND WHAT TO REJECT. YOU MAY ACCEPT EVERYTHING A WITNESS SAID, OR PART OF IT, OR NONE OF IT. IN EVALUATING TESTIMONY, YOU SHOULD USE THE TESTS FOR ACCURACY AND TRUTHFULNESS THAT PEOPLE USE IN DETERMINING MATTERS OF IMPORTANCE IN EVERYDAY LIFE, INCLUDING SUCH FACTORS AS: THE WITNESS' ABILITY TO SEE OR HEAR OR KNOW THE THINGS TO WHICH HE/SHE TESTIFIED; THE QUALITY OF HIS/HER MEMORY' THE WITNESS' MANNER WHILE TESTIFYING; WHETHER HE/SHE HAS ANY MOTIVE, BIAS, OR PREJUDICE; WHETHER THE WITNESS IS CONTRADICTED BY ANYTHING HE/SHE SAID OR WROTE BEFORE TRIAL, OR BY OTHER EVIDENCE; AND THE REASONABLENESS OF THE TESTIMONY WHEN CONSIDERED IN THE LIGHT OF THE OTHER EVIDENCE.

CONSIDER ALL OF THE EVIDENCE IN LIGHT OF REASON, COMMON SENSE, AND EXPERIENCE.

EXPERT WITNESS

A WITNESS QUALIFIED AS AN EXPERT BY EDUCATION OR EXPERIENCE MAY STATE OPINIONS ON MATTERS IN THAT WITNESS' FIELD OF EXPERTISE, AND MAY ALSO STATE REASONS FOR THOSE OPINIONS. EXPERT

TESTIMONY SHOULD BE JUDGED JUST AS ANY OTHER TESTIMONY. YOU ARE NOT BOUND BY IT. YOU MAY ACCEPT IT OR REJECT IT, IN WHOLE OR IN PART, AND YOU SHOULD GIVE IT AS MUCH WEIGHT AS YOU THINK IT DESERVES, CONSIDERING THE WITNESS' QUALIFICATIONS AND EXPERIENCE, THE REASONS GIVEN FOR THE OPINIONS, AND ALL OTHER EVIDENCE IN THE CASE.

REQUIREMENT FOR EXPERT TESTIMONY/LAY STANDARDS

THE LAW REQUIRES THAT THE STANDARD OF CARE TO BE APPLIED IN THIS CASE BE ESTABLISHED BY EXPERT TESTIMONY. THE LAW DOES NOT ALLOW YOU TO SET UP YOUR OWN STANDARDS OF WHAT YOU FEEL SHOULD OR SHOULD NOT HAVE BEEN DONE IN THIS CASE. IN OTHER WORDS, YOU MAY NOT ESTABLISH LAY STANDARDS TO BE APPLIED TO THE CARE IN THIS CASE.

REASONABLE MEDICAL PROBABILITY

THE LAWYERS HAVE USED THE TERMS REASONABLE DEGREE OF MEDICAL PROBABILITY AND REASONABLE DEGREE OF NURSING PROBABILITY. THESE ARE LEGAL TERMS THAT REFER TO MEDICAL AND NURSING PROBABILITIES. IN OTHER WORDS, SOMETHING IS TRUE TO A REASONABLE DEGREE OF MEDICAL OR NURSING PROBABILITY, IF IT IS PROBABLY MORE TRUE THAN NOT TRUE.

BURDEN OF PROOF PREPONDERANCE OF THE EVIDENCE

BURDEN OF PROOF MEANS BURDEN OF PERSUASION. ON ANY CLAIM, THE PARTY WHO HAS THE BURDEN OF PROOF MUST PERSUADE YOU, BY THE EVIDENCE, THAT THE CLAIM IS MORE PROBABLY TRUE THAN NOT TRUE. THIS MEANS THAT THE EVIDENCE THAT FAVORS THAT PARTY OUTWEIGHS THE OPPOSING EVIDENCE. IN DETERMINING WHETHER A PARTY HAS MET THIS BURDEN, CONSIDER ALL THE EVIDENCE THAT BEARS ON THAT CLAIM, REGARDLESS OF WHICH PARTY PRODUCED IT.

BURDEN OF PROOF CLEAR AND CONVINCING EVIDENCE

THE PUNITIVE DAMAGES CLAIM IN THIS CASE REQUIRES PROOF BY CLEAR AND CONVINCING EVIDENCE. A PARTY WHO HAS THE BURDEN OF PROOF BY CLEAR AND CONVINCING EVIDENCE MUST PERSUADE YOU BY THE EVIDENCE THAT THE CLAIM IS HIGHLY PROBABLE. THIS STANDARD IS MORE EXACTING THAN THE STANDARD OF MORE PROBABLY TRUE THAN NOT TRUE, BUT IT LESS EXACTING THAN THE STANDARD OF PROOF BEYOND A REASONABLE DOUBT. YOU ARE TO USE THE STANDARD OF MORE PROBABLY TRUE THAN NOT TRUE FOR ALL CLAIMS IN THIS CASE EXCEPT FOR THOSE ON WHICH YOU ARE SPECIFICALLY INSTRUCTED THAT THE BURDEN OF PROOF IS THE STANDARD OF CLEAR AND CONVINCING EVIDENCE. IN DETERMINING WHETHER A PARTY HAS MET ANY BURDEN OF PROOF, YOU WILL CONSIDER ALL THE EVIDENCE, WHETHER PRESENTED BY PLAINTIFFS OR DEFENDANTS.

CORPORATE PARTY

A CORPORATION IS A PARTY IN THIS LAWSUIT. CORPORATIONS AND INDIVIDUALS ARE ENTITLED TO THE SAME FAIR AND IMPARTIAL CONSIDERATION AND TO JUSTICE REACHED BY THE SAME LEGAL STANDARD.

WHEN I USE THE WORD "PERSON" IN THESE INSTRUCTIONS, OR WHEN I USE ANY PERSONAL PRONOUN REFERRING TO A PARTY, THOSE INSTRUCTIONS APPLY TO DEFENDANT CORPORATION(S)

RESPONDEAT SUPERIOR LIABILITY

EMPLOYERS ARE RESPONSIBLE FOR THE ACTIONS OF ITS EMPLOYEES/AGENTS IF THE EMPLOYEE/AGENT WAS ACTING WITHIN THE SCOPE OF HIS/HER EMPLOYMENT AUTHORITY.

PLAINTIFF CLAIMS THAT THE DEFENDANT CORPORATIONS ARE RESPONSIBLE FOR THE ACTIONS OF THEIR EMPLOYEES/AGENTS. TO ESTABLISH THIS CLAIM PLAINTIFF MUST PROVE THAT:

1. THE ACT WAS THE KIND THAT THE EMPLOYEE/AGENT WAS EMPLOYED/AUTHORIZED TO PERFORM;
2. THE ACT OCCURRED SUBSTANTIALLY WITHIN THE AUTHORIZED TIME AND SPACE LIMIT OF THE EMPLOYMENT/AUTHORITY; AND
3. THE ACT WAS MOTIVATED AT LEAST IN PART BY A PURPOSE TO SERVE THE EMPLOYER/PRINCIPAL.

INSURANCE

IN REACHING YOUR VERDICT, YOU SHOULD NOT CONSIDER OR DISCUSS WHETHER A PARTY WAS OR WAS NOT COVERED BY INSURANCE. INSURANCE OR THE LACK OF INSURANCE HAS NO BEARING ON WHETHER OR NOT A PARTY WAS AT FAULT, OR THE DAMAGES, IF ANY, A PARTY HAS SUFFERED OR SHOULD OR SHOULD NOT BE AWARDED.

STATEMENT OF CLAIM: DEFINITION OF FAULT: DEFINITION OF NEGLIGENCE AND CAUSATION

COLLEEN A. HANSCOME CLAIMS THAT ALL DEFENDANTS WERE AT FAULT. FAULT IS NEGLIGENCE THAT WAS A CAUSE OF MR. HANSCOME'S INJURY.

NEGLIGENCE IS THE FAILURE TO USE REASONABLE CARE. NEGLIGENCE MAY CONSIST OF ACTION OR INACTION. NEGLIGENCE IS THE FAILURE TO ACT AS A REASONABLY CAREFUL PERSON WOULD ACT UNDER THE CIRCUMSTANCES.

BEFORE YOU CAN FIND ANY PERSON AT FAULT, YOU MUST FIND THAT PERSON'S NEGLIGENCE WAS A CAUSE OF MR. HANSCOME'S INJURY. NEGLIGENCE CAUSES AN INJURY IF IT HELPS PRODUCE THE INJURY, AND IF THE INJURY WOULD NOT HAVE HAPPENED WITHOUT THE NEGLIGENCE. THERE MAY BE MORE THAN ONE CAUSE OF AN INJURY.

PLAINTIFF'S BURDEN OF PROOF

PLAINTIFF MUST PROVE:

1. DEFENDANTS WERE AT FAULT;
2. PLAINTIFF WAS INJURED; AND
3. PLAINTIFF'S DAMAGES.

DEFINITIONS

AS IT RELATES TO AN ELDER ABUSE CLAIM:

1. "ABUSE" IS DEFINED AS INUURY CAUSED BY NEGLIGENT ACTS OR OMISSIONS;
2. "NEGLECT" MEANS A PATTERN OF CONDUCT THAT RESULTS IN THE DEPRIVATION OF FOOD, WATER, MEDICATION, MEDICAL SERVICES, OR OTHER SERVICES NECESSARY TO MAINTAIN MINIMUM PHYSICAL OR MENTAL HEALTH;
3. "VULNERABLE ADULT" MEANS AN INDIVIDUAL WHO IS EIGHTEEN YEARS OF AGE OR OLDER WHO IS INCAPACITATED OR UNABLE TO PROTECT HIMSELF FROM ABUSE OR NEGLECT BY OTHERS BECAUSE OF PHYSICAL OR MENTAL IMPAIRMENT;
4. "INCAPACITY" MEANS AN IMPAIRMENT BY REASON OF MENTAL ILLNESS, MENTAL DEFICIENCY, MENTAL DISORDER, PHYSICAL ILLNESS OR DISABILITY, ADVANCED AGE OR OTHER CAUSE TO THE EXTENT THAT THE PERSON LACKS SUFFICIENT UNDERSTANDING OR CAPCITY TO MAKE OR COMMUNICATE INFORMED DECISIONS CONCERNING HIS PERSON;
5. "ACTIVITIES OF DAILY LIVING" MEANS BATHING, DRESSING, GROOMING, EATING, MOBILITY, TRANSFERS AND TOILETING;

PRE-EXISTING CONDITION, UNUSUALLY SUSCEPTIBLE PLAINTIFF

PLAINTIFF IS NOT ENTITLED TO COMPENSATION FOR ANY PHYSICAL OR EMOTIONAL CONDITION THAT PRE-EXISTED THE FAULT OF DEFENDANTS. HOWEVER, IF PLAINTIFF HAD ANY PRE-EXISTING PHYSICAL OR EMOTIONAL CONDITION THAT WAS AGGRAVATED OR MADE WORSE BY DEFENDANTS' FAULT, YOU MUST DECIDE THE FULL AMOUNT OF MONEY THAT WILL REASONABLY AND FAIRLY COMPENSATE PLAINTIFF FOR THAT AGGRAVATION OR WORSENING.

YOU MUST DECIDE THE FULL AMOUNT OF MONEY THAT WILL REASONABLY AND FAIRLY COMPENSATE PLAINTIFF FOR ALL DAMAGES CAUSED BY THE FAULT OF DEFENDANTS, EVEN IF PLAINTIFF WAS MORE SUSCEPTIBLE TO INJURY THAN A NORMALLY HEALTHY PERSON WOULD HAVE BEEN, AND EVEN IF A NORMALLY HEALTHY PERSON WOULD NOT HAVE SUFFERED SIMILAR INJURY.

VIOLATION OF ADULT PROTECTIVE SERVICES ACT (APSA)

THE ISSUES FOR YOUR DETERMINATION ON THE PLAINTIFF'S CLAIM FOR VIOLATION OF THE ADULT PROTECTIVE SERVICES ACT ARE:

1. WHETHER NOYES HANSCOME WAS AN INCAPACITATED OR VULNERABLE ADULT WHOSE LIFE OR HEALTH HAD BEEN ENDANGERED OR INJURED BY ABUSE OR NEGLECT;
2. WHETHER DEFENDANTS WERE EMPLOYED, OR ASSUMED A LEGAL DUTY, TO PROVIDE CARE TO NOYES HANSCOME;
3. WHETHER DEFENDANTS CAUSED OR PERMITTED NOYES HANSCOME'S LIFE OR HEALTH TO BE ENDANGERED OR INJURED BY ABUSE OR NEGLECT.

RIGHT TO BRING ELDER ABUSE CLAIM AFTER THE DEATH OF THE PLAINTIFF

THE CAUSE OF ACTION OR THE RIGHT TO BRING A CAUSE OF ACTION UNDER THE ADULT PROTECTIVE SERVICES ACT SHALL NOT BE LIMITED OR AFFECTED BY THE DEATH OF THE INCAPACITATED OR VULNERABLE ADULT.

HERE, COLLEEN HANSCOME, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF NOYES HANSCOME, IS A PROPER PARTY TO BRING THE CLAIM ON BEHALF OF THE ESTATE OF NOYES HANSCOME.

MEASURE OF DAMAGES - APSA CLAIM

IF YOU FIND THE DEFENDANTS LIABLE TO PLAINTIFF ON THE APSA CLAIM, YOU MUST THEN DECIDE THE FULL AMOUNT OF MONEY THAT WILL REASONABLY AND FAIRLY COMPENSATE THE PLAINTIFF FOR EACH OF THE FOLLOWING ELEMENTS OF DAMAGES SUFFERED BY NOYES HANSCOME AND PROVED BY THE EVIDENCE TO HAVE RESULTED FROM THE FAULT OF THE DEFENDANTS:

1. THE NATURE, EXTENT AND DURATION OF THE INJURY;
2. THE PAIN, DISCOMFORT, SUFFERING, DISABILITY, DISFIGUREMENT, AND ANXIETY EXPERIENCED AS A RESULT OF THE INJURY;
3. THE REASONABLE EXPENSES OF NECESSARY MEDICAL CARE, TREATMENT AND SERVICES RENDERED;
4. LOSS OF LOVE, CARE, AFFECTION, COMPANIONSHIP, AND OTHER PLEASURES OF THE FAMILY RELATIONSHIP;
5. LOSS OF ENJOYMENT OF LIFE, THAT IS, THE PARTICIPATION IN LIFE'S ACTIVITIES TO THE QUALITY AND EXTENT NORMALLY ENJOYED BEFORE THE INJURY.

WRONGFUL DEATH CLAIM

THE ISSUES FOR YOUR DETERMINATION ON THE PLAINTIFF'S CLAIM FOR THE WRONGFUL DEATH OF NOYES HANSCOME ARE:

1. NOYES HANSCOME IS DECEASED; AND
2. NOYES HASCOME'S DEATH WAS CAUSED BY THE NEGLIGENT ACTS OF THE DEFENDANTS.

DAMAGES FOR WRONGFUL DEATH OF SPOUSE, PARENT OR CHILD

IF YOU FIND DEFENDANTS LIABLE TO PLAINTIFF, YOU MUST THEN DECIDE THE FULL AMOUNT OF MONEY THAT WILL REASONABLY AND FAIRLY COMPENSATE COLLEEN HANSCOME AND CHANDLER HANSCOME, SEPARATELY, FOR EACH OF THE FOLLOWING ELEMENTS OF DAMAGES PROVED BY THE EVIDENCE TO HAVE RESULTED FROM THE DEATH OF NOYES HANSCOME:

1. THE LOSS OF LOVE, AFFECTION, COMPANIONSHIP, CARE, PROTECTION, AND GUIDANCE SINCE THE DEATH AND IN THE FUTURE;
2. THE PAIN, GRIEF, SORROW, ANGUISH, STRESS, SHOCK, AND MENTAL SUFFERING ALREADY EXPERIENCED, AND REASONABLY PROBABLE TO BE EXPERIENCED IN THE FUTURE;
3. THE REASONABLE EXPENSES OF FUNERAL AND BURIAL;
4. THE REASONABLE EXPENSES OF NECESSARY MEDICAL CARE AND SERVICES FOR THE INJURY THAT RESULTED IN THE DEATH.

LOSS. CONCEALMENT. DESTRUCTION OR FAILURE TO PRESERVE EVIDENCE

LITIGANTS HAVE A DUTY TO PRESERVE EVIDENCE WHICH THEY KNOW, OR REASONABLY SHOULD KNOW IS RELEVANT IN THE ACTION, IS REASONABLY CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE, IS REASONABLY LIKELY TO BE REQUESTED DURING DISCOVERY AND/OR IS THE SUBJECT OF A PENDING DISCOVERY REQUEST.

IF YOU FIND THAT THE DEFENDANT'S HAVE LOST, DESTROYED, OR FAILED TO PRESERVE EVIDENCE, THE CONTENT OR QUALITY OF WHICH ARE IMPORTANT TO THE ISSUES IN THIS CASE, AND THAT THE EXPLANATION FOR THE LOSS, CONCEALMENT, DESTRUCTION OR FAILURE TO PRESERVE IS INADEQUATE, THEN YOU MAY INFER THAT THE FACTS CONTAINED IN THAT DOCUMENTARY EVIDENCE ARE AGAINST THE INTERESTS OF THE DEFENDANT'S.

IF YOU CONCLUDE THAT THE DEFENDANT'S LOST, CONCEALED, DESTROYED OR FAILED TO PRESERVE EVIDENCE, YOU MAY INFER THAT THE EVIDENCE LOST, CONCEALED, DESTROYED OR NOT PRESERVED WAS ADVERSE TO THE DEFENDANTS INTERESTS, HOWEVER, YOU MAY NOT AWARD ADDITIONAL OR SEPARATE DAMAGES FOR THAT LOSS OF, CONCEALMENT OF, DESTRUCTION OF OR FAILURE TO PRESERVE SUCH EVIDENCE.

PUNITIVE DAMAGES

YOU MAY ALSO ASSESS ADDITIONAL DAMAGES TO PUNISH THE ACTS AND OMISSIONS OF THE DEFENDANT'S, AND TO DETER THE DEFENDANTS AND OTHERS IN THE NURSING HOME BUSINESS FROM SIMILAR MISCONDUCT IN THE FUTURE. SUCH DAMAGES ARE CALLED PUNITIVE OR EXEMPLARY DAMAGES.

TO RECOVER SUCH DAMAGES, PLAINTIFFS HAVE THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE, EITHER DIRECT OR CIRCUMSTANTIAL, THAT THE DEFENDANTS ACTED WITH AN EVIL MIND. THIS REQUIRED STATE OF MIND MAY BE SHOWN BY ANY OF THE FOLLOWING:

1. INTENT TO CAUSE INJURY; OR
2. WRONGFUL CONDUCT MOTIVATED BY SPITE OR ILL WILL; OR
3. DEFENDANTS ACTED TO SERVE IT'S OWN INTERESTS, HAVING REASON TO KNOW AND CONSCIOUSLY DISREGARDING A SUBSTANTIAL RISK THAT IT'S CONDUCT MIGHT SIGNIFICANTLY INJURE THE RIGHTS OF OTHERS.

TO PROVE THIS REQUIRED STATE OF MIND BY CLEAR AND CONVINCING EVIDENCE, PLAINTIFFS MUST PERSUADE YOU THAT THE PUNITIVE DAMAGES CLAIM IS HIGHLY PROBABLE. THIS BURDEN OF PROOF IS MORE EXACTING THAN THE STANDARD OF MORE PROBABLY TRUE THAN NOT TRUE, WHICH APPLIES TO ALL OTHER CLAIMS IN THIS CASE, BUT IT IS LESS EXACTING THAN THE STANDARD OF PROOF BEYOND A REASONABLE DOUBT, WHICH IS USED IN CRIMINAL CASES.

IF YOU FIND THIS REQUIRED STATE OF MIND EXISTED IN THIS CASE YOU MUST ALSO FIND, BY A PREPONDERANCE OF THE EVIDENCE, THAT THIS AGGRAVATING FACTOR WAS A CAUSE OF THE INJURY SUFFERED BY MR. HANSCOME.

JURY DELIBERATION PROTOCOL

THE FIRST THING YOU SHOULD DO AFTER YOU ENTER THE JURY ROOM IS CHOOSE A PRESIDING JUROR. THE PRESIDING JUROR WILL PRESIDE OVER YOUR DELIBERATIONS AND WILL SIGN ANY VERDICT.

YOU ARE TO DELIBERATE ONLY WHEN ALL JURORS ARE PRESENT IN THE JURY ROOM. EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, BUT ONLY AFTER YOU HAVE DISCUSSED THE ISSUES FULLY WITH EACH OTHER, AND LISTENED TO THE VIEWS OF YOUR FELLOW JURORS.

WHILE YOU ARE DISCUSSING THE CASE, DO NOT HESITATE TO RE-EXAMINE YOUR OWN OPINION AND CHANGE YOUR MIND IF YOU BECOME CONVINCED THAT YOU ARE WRONG. HOWEVER, DO NOT GIVE UP YOUR SINCERE AND HONEST OPINION SIMPLY BECAUSE OTHERS DISAGREE WITH YOU.

YOU SHOULD NOT CALL FOR A VOTE UNTIL YOU HAVE CONSIDERED ALL THE EVIDENCE IN THE CASE.

YOU ARE TO DECIDE THIS CASE BASED UPON THE TESTIMONY AND EXHIBITS THAT HAVE BEEN ADMITTED IN EVIDENCE AND THE LAW AS STATED IN THESE INSTRUCTIONS. YOU WILL NOT RECEIVE A TRANSCRIPT OF THE WITNESS' TESTIMONY NOR WILL YOU BE ABLE TO HEAR ADDITIONAL TESTIMONY FROM THE WITNESSES. THEREFORE, YOU MUST RELY UPON YOUR COLLECTIVE MEMORIES.

SHOULD ANY OF YOU, OR THE JURY AS A WHOLE, HAVE A QUESTION OR MESSAGE FOR THE COURT DURING DELIBERATIONS, PLEASE WRITE IN ON THE QUESTION FORM PROVIDED.

ALL QUESTIONS OR MESSAGES MUST BE COMMUNICATED TO THE COURT IN WRITING AND MUST BE SIGNED BY YOU OR THE FOREPERSON. THE COURT WILL CONSIDER YOUR QUESTION OR NOTE AND, IF NECESSARY, CONSULT WITH COUNSEL BEFORE ANSWERING IT. WHILE THE COURT IS CONSIDERING YOUR QUESTION OR NOTE, PLEASE CONTINUE YOUR DELIBERATIONS, IF POSSIBLE.

NO MEMBER OF THE JURY SHOULD EVER ATTEMPT TO COMMUNICATE WITH ME EXCEPT BY A SIGNED WRITING, AND YOU ARE NOT TO TELL ANYONE, INCLUDING ME OR ANY MEMBER OF MY STAFF, HOW YOU STAND, NUMERICALLY OR OTHERWISE, UNTIL AFTER YOU HAVE REACHED A VERDICT OR HAVE BEEN DISCHARGED.

YOU ARE TO DECIDE THIS CASE WITHOUT SYMPATHY, BIAS OR PREJUDICE. YOUR OATH AS A JUROR REQUIRES YOU TO MAKE A GOOD FAITH EFFORT TO REACH A VERDICT.

THE CASE IS NOW SUBMITTED TO YOU FOR YOUR DECISION.

AT LEAST SIX OF YOU MUST AGREE ON A VERDICT. IF ALL EIGHT AGREE ON A VERDICT, ONLY THE FOREPERSON NEED SIGN IT, ON THE LINE MARKED FOREPERSON. IF SIX OR SEVEN AGREE ON A VERDICT, ALL THOSE WHO AGREE, AND ONLY THOSE WHO AGREE MUST SIGN THE VERDICT ON THE NUMBERED LINES PROVIDED, LEAVING THE LINE MARKED FOREPERSON BLANK. PLEASE PRINT YOUR NAME UNDER YOUR SIGNATURE.

THE VERDICT FORM(S) READ AS FOLLOWS:

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.